Supreme Court, U.S.
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No. ___

IN THE

Supreme Court of the United States

ROYAL CARIBBEAN CRUISES LTD.,
Petitioner,

v.

LAWRENCE W. HALL,
Respondent.

On Petition for a Writ of Certiorari to the Florida District Court of Appeal for the Third District

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PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether state courts must follow the procedures set forth by the federal courts in determining the law to apply when there is no established rule of substantive maritime law governing the rights between the parties.

2. Whether an established maritime rule of substantive law exists in the absence of a Congressional act, a decision of this Court, or a concurrence of circuit court decisions.

3. Whether the procedures developed by federal courts for supplementing gaps in federal maritime law require application of state dram shop law in the absence of an established rule of maritime law.

RULE 29.6 CORPORATE DISCLOSURE STATEMENT

Petitioner, Royal Caribbean Cruises Ltd., has no parent corporation and no publicly held company owns 10% or more of its stock.

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Royal Caribbean Cruises Ltd. petitions for a writ of certiorari to review the decision of the Florida Third District Court of Appeal, the state court of last resort, on an issue of federal maritime law. That issue is whether state courts and inferior federal courts can fashion new positive rules of law creating liability in maritime cases. Stated conversely: Whether state or federal district courts can impose a "duty" in circumstances where neither Congress, this Court, nor the circuit courts have ever found such a duty exists.

The duty at issue in this case surrounds a shipowner's liability for passengers' self-inflicted injuries arising from their own voluntary intoxication. However, the decision below and an increasing number of other state courts threaten to destroy the overarching principle of maritime law—uniformity—which aims to create a body of positive maritime

law fashioned by Congress, and, in its absence, by this Court, or, at the very least, by a consensus of federal circuit courts. The court below ignored the procedures established by this Court for determining when gaps in general maritime law exist and, instead, established a new maritime dram shop rule of liability for shipowners who sell alcohol to their passengers.

The issues in this case are framed by a conflicting line of lower court cases, some which have utilized the proper procedures and some which have not. *Compare Fenninger v. Harris Crab House, Inc.*, 211 F.3d 1264, 2000 WL 289735 (4th Cir. 2000) (unpublished), *Voillat v. Red & White Fleet*, No. C-03-3016, 2004 WL 547146 (N.D. Cal. Mar. 18, 2004), *Meyer v. Carnival Cruise Lines, Inc.*, No. C-93-2383, 1994 WL 832006 (N.D. Cal. Dec. 29, 1994), *and Horak v. Argosy Gaming Co.*, 648 N.W.2d 137 (Iowa 2002), *with Bay Casino, LLC v. M/V Royal Empress*, 199 F.R.D. 464 (E.D.N.Y. 1999), *Young v. Players Lake Charles, LLC*, 47 F. Supp. 2d 832 (S.D. Tex. 1999), *and Quinn v. St. Charles Gaming Co.*, 815 So. 2d 963 (La. Ct. App. 2002). The conflict between these cases raises serious federal questions which this Court should resolve.

OPINION BELOW

The decision of the Florida Third District Court of Appeal is reported at *Hall v. Royal Caribbean Cruises, Ltd.*, 888 So. 2d 654 (Fla. Dist. Ct. App. 2004). It is reprinted in the Appendix at App. A, 1a-2a.

STATEMENT OF JURISDICTION

The opinion of the Florida Third District Court of Appeal was issued on July 21, 2004 (App. A, at 1a) and rendered on December 13, 2004, when a timely motion for rehearing and rehearing *en banc* was denied. App. B, 3a. No basis for Florida Supreme Court review of the dispositive federal issue

exists under Florida law. *See* Art. V, § 3(b), Fla. Const.; Fla. R. App. P. 9.030(a).[1] The decision below reversed an order dismissing Respondent's amended complaint with prejudice. App. A at 1a. Jurisdiction is invoked pursuant to 28 U.S.C. § 1257(a).

STATUTORY PROVISION INVOLVED

Florida's dram shop law provides:

> **Liability for injury or damage resulting from intoxication.**—A person who sells or furnishes alcoholic beverages to a person of lawful drinking age shall not thereby become liable for injury or damage caused by or resulting from the intoxication of such person, except that a person who willfully and unlawfully sells or furnishes alcoholic beverages to a person who is not of lawful drinking age or who knowingly serves a person habitually addicted to the use of any or all alcoholic beverages may become liable for injury or damage caused by or resulting from the intoxication of such minor or person.

§ 768.125, Fla. Stat. (2004).

STATEMENT

This case raises important, recurring questions relating to a state court's authority to establish positive rules of federal, substantive maritime law in the absence of an act of Congress, a decision of this Court or a concurrence of circuit

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[1] *See Tucker v. Florida Dep't of Corrections*, 301 F.3d 1281, 1286 (11th Cir. 2002) (Barkett, J., concurring) ("In Florida, the decision of the district court of appeal is the final decision in the course of the normal appellate process."); *Bunkley v. State*, 882 So. 2d 890, 908 (Fla. 2004) (Wells, J., concurring) ("The district courts of appeal are, in most instances, courts of last resort . . . ."); *accord Martin v. State*, 747 So. 2d 386, 390 (Fla. 2000) ("Since the 1980 constitutional revisions . . . the district courts now constitute the courts of last resort for the vast majority of litigants.").

court decisions and whether state courts may disregard the procedures developed by this Court for supplementing federal maritime law when there are gaps. At the heart of both of these issues is whether there exists a positive maritime rule imposing a duty on a shipowner to protect a passenger from self-inflicted injuries arising from his own voluntary intoxication as determined by the state court decision below. Because courts disagree on this issue, they are applying different substantive rules of liability in maritime cases.

This case stems from the dismissal of an action to recover damages suffered by Respondent Lawrence Hall, a 44 year old adult male, while he was a passenger aboard a cruise ship operated by Petitioner Royal Caribbean Cruises Ltd. ("RCL"). The amended complaint alleges that Respondent, a paying passenger on Petitioner's cruise ship, was injured on the high seas when he became voluntarily intoxicated aboard the ship and subsequently fell over a stairway railing. App. A at 1a.

Mr. Hall filed an action against RCL to recover damages for the injuries he suffered as a result of his fall. He alleged that RCL was negligent for allowing him to become voluntarily intoxicated at the ship's bars during the course of the cruise and that it was liable for the injuries he sustained when he subsequently fell over a chest-high railing in the ship's centrum area to the deck below. The trial court dismissed the amended complaint with prejudice for failure to state a cause of action under federal maritime law.

Respondent appealed the dismissal of his action to the Florida Third District Court of Appeal. On July 21, 2004, that court reversed the dismissal finding that "the complaint clearly stated a cause of action for breach of the defendant's duty to exercise reasonable care for the safety of its passengers as established by the general maritime law." App. A at 1a-2a. In so doing, the appellate court rejected what it called the "minority position" which would have required it

to apply Florida's dram shop law. App. A at 2a n.1. The appellate court instead applied the general maritime duty of "reasonable care" to a situation where general maritime and negligence principles have never found such a duty. The decision imposes liability upon all shipowners who sell alcohol for self-inflicted injuries sustained by passengers because of their own voluntary intoxication. The appellate court subsequently denied Petitioner's motion for rehearing and rehearing *en banc* on December 13, 2004. App. B at 3a.

REASONS FOR GRANTING THE PETITION

I. THIS COURT MUST REASSERT CONTROL OVER THE UNIFORM DEVELOPMENT OF MARITIME LAW WHICH HAS BEEN UNDERMINED BY STATES WHICH HAVE FAILED TO FOLLOW THE FEDERAL PROCEDURES FOR ENSURING UNIFORMITY

As repeatedly observed by this Court over the years:

> [I]t is not a principle of our maritime law that a court of admiralty must invariably refuse to recognize and enforce a liability which the State has established in dealing with a maritime subject. On the contrary, there are numerous instances in which general maritime law has been modified or supplemented by state action . . . With respect to maritime torts we have held that the State may modify or supplement the maritime law by creating liability which a court of admiralty will recognize and enforce when the state action is not hostile to the characteristic features of the maritime law or inconsistent with federal legislation.

Just v. Chambers, 312 U.S. 383, 387-88 (1941) (citations & footnote omitted). Consistent with *Just*, this Court has permitted states to invoke their own laws to supplement gaps in federal maritime law but has always reserved for the federal courts the determination of when and how states can

supplement. *See, e.g., Fenninger v. Harris Crab House, Inc.*, 211 F.3d 1264, 2000 WL 289735 (4th Cir. 2000) (unpublished) (adopting the forum state's dram shop law to supplement the gap in general maritime law); *Elevating Boats, Inc. v. Gulf Coast Marine*, Inc., 766 F.2d 195, 198 (5th Cir. 1985) (applying law of state where marine insurance contract was issued when federal maritime law did not answer the issue presented); *Schultz v. Florida Keys Dive Center, Inc.*, 224 F.3d 1269, 1273 (11th Cir. 2000) (applying state law since no principle of federal maritime law governed the validity of a liability release).

In this manner, when state courts incorporate state law into federal maritime law pursuant to the guidelines set by this Court, federal courts have maintained control over the uniform development of maritime law, even in those circumstances where they have looked to state law to supplement any gaps. The principle of uniformity is not limited to the mere provision of a uniform substantive rule, but instead is designed to "'assure uniform vindication of federal policies.'" *Yamaha Motor Corp. v. Calhoun*, 516 U.S. 199, 213 (1996) (quoting *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375, 401 (1970)). Accordingly, the principle of uniformity applies equally to the procedures for determining when and how states can supplement federal maritime law with their own laws.

Supplementing maritime law with local law in the manner and to the extent established by federal law promotes uniformity in at least two ways. First, it creates a reliable rule by which parties may predict which local rules will govern their dealings. Second, it forestalls the creation of a myriad of divergent maritime rules when neither Congress nor this Court has critically analyzed and balanced the competing interests and policies to craft a new rule of law.

Due to Florida's geography which has almost 1200 miles of coastline, a disproportionate number of maritime cases

have arisen in Florida. Most of these cases have been filed in Florida state courts under the "saving to suitors" clause, *see* 28 U.S.C. § 1333(1), rather than in the federal courts. Since there is no direct right of any appeal from Florida state courts to the federal courts in maritime cases, Florida state courts have played a disproportionately powerful role in the development of maritime law. The same is true of other coastal states such as Louisiana.

Unfortunately, the state courts have often failed to follow the substantive maritime law set down by the federal courts on many important issues. *See, e.g., Carlisle v. Carnival Corp.*, 864 So. 2d 1, 7 (Fla. Dist. Ct. App. 2004) (refusing to follow the overwhelming weight of federal authority which holds that a cruise ship is not vicariously liable for the negligence of an independent contractor doctor working aboard the ship in treating its passengers);[2] *Royal Caribbean Cruises, Ltd. v. Sinclair*, 808 So. 2d 231 (Fla. Dist. Ct. App. 2001) (refusing to apply 46 U.S.C. § 183(g) to a seaman's claim alleging negligence of shore side physician in suit against shipowner despite the clear facial application of the statute); *Celebrity Cruises, Inc. v. Hitosis*, 785 So. 2d 521, 522 (Fla. Dist. Ct. App. 2000) (refusing to follow the virtually uniform federal cases which uphold the forum selection provisions in standard Filipino overseas employment agency contracts);[3] *Kloster Cruise Ltd. v. Segui*, 679 So. 2d 10, 12 (Fla. Dist. Ct. App. 1996) (refusing to follow federal cases prohibiting the recovery of punitive damages in maintenance

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[2] As noted by the Fifth Circuit in *Barbetta v. S/S Bermuda Star*, 848 F.2d 1364 (5th Cir. 1988): "An impressive number of courts from many jurisdictions have, for almost one hundred years, followed the same basic rule [of non-liability]." *Id.* at 1369.

[3] *Contra Cruz v. Maritime Co. of Philippines*, 702 F.2d 47 (2nd Cir. 1983), *aff'g* 549 F. Supp 285 (S.D.N.Y. 1982); *Cruz v. Chesapeake Shipping, Inc.*, 932 F.2d 218 (3rd Cir. 1991); *Marinechance Shipping, Ltd. v. Sebastian*, 143 F.3d 216 (5th Cir. 1998).

and cure claims);[4] *Royal Caribbean Corp. v. Modesto*, 614 So. 2d 517, 519 (Fla. Dist. Ct. App. 1992) (refusing to recognize oral settlement agreement reached at mediation).[5]

As a result, contrary to *Just*, some state courts have created positive rules of liability hostile to the characteristic features of maritime law or inconsistent with federal legislation and federal appellate decisions. In so doing, those state courts have ignored the procedures laid down by the federal courts for determining the law to apply when there is no established maritime rule governing the rights between the parties. Such action undermines the uniformity of maritime law, and, as here, causes inconsistent results.

In rejecting the principles of federal law that permit or require application of local law when there is no well-established positive rule of maritime law, the Florida Third District Court of Appeal joined a growing trend of courts by filling in the gaps of organic maritime law with *new* rules of maritime law. This case presents the Court with the opportunity to reassert that when Congress, this Court, or the circuit courts have not yet acted, inferior courts are not free to fashion new rules of organic maritime law but must dispose of cases before them solely by reference to the local law when it is "not hostile to the characteristic features of the maritime law or inconsistent with federal legislation." *Just*, 312 U.S. at 387-88.

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[4] *Contra Guevara v. Maritime Overseas Corp.*, 59 F.3d 1496 (5th Cir. 1995); *Glynn v. Roy Al Boat Mgmt. Corp.*, 57 F.3d 1495 (9th Cir. 1995).

[5] *Contra Kossick v. United Fruit Co.*, 365 U.S. 731, 734 (1961) (maritime law recognizes oral settlement agreements).

II. THERE IS NO ESTABLISHED MARITIME RULE CREATING LIABILITY FOR SHIPOWNERS BASED UPON THEIR SALE OF ALCOHOL TO PASSENGERS

A. In the Absence of a Congressional Act, a Decision of This Court, or a Concurrence of Circuit Court Decisions, Established Maritime Rules of Substantive Law Do Not Exist

A maritime rule exists only when established by Congressional legislation or authoritatively determined by federal appellate courts. *See Wilburn Boat Co. v. Fireman's Fund Ins. Co.*, 348 U.S. 310, 314-15 (1955). In *Wilburn Boat*, this Court established the framework for determining whether to apply local laws in maritime cases. The first inquiry is whether Congress has enacted legislation which would conflict with the local law. *Id.* at 314. If there is such legislation, the local law will not be applied. If there is no such legislation, the second inquiry looks to whether there is a judicially established federal admiralty rule. In the absence of either Congressional legislation or a judicially established federal rule, the final inquiry is whether this Court should fashion such a rule. *Id.* When the answers to the above questions are all in the negative, state law will be used to supplement the gap in maritime law as long as application of the particular state rule would not act to destroy the uniformity required "when the essential features of an exclusive federal jurisdiction are involved." *Just*, 312 U.S. at 392.

Determining whether a proposed rule of maritime law is judicially established will necessarily depend on the number of judicial decisions and the level of consideration it has been given. There is both a quantum and a quality to "judicial establishment." In *Just*, that quantum and quality were described as being whether the purported rule was "so securely based" that a different one could only be established by Congressional legislation. *Id.* at 387. In deciding that the

rule at issue there—a rule precluding recovery against a deceased shipowner—was not "so securely based" in maritime law, this Court explained:

> The rule of the non-survival of a cause of action against a deceased tortfeasor has but a *slender basis* in admiralty cases in this country. The precise question here presented does not seem to have been *authoritatively determined.*

Id. at 388 n. 4 (citations omitted & emphasis added).[6]

Similarly, in *Wilburn Boat*, this Court grappled with whether there was a judicially established maritime law requiring strict fulfillment of all warranties in a maritime insurance policy. The insureds contended that Texas law applied which held that breach of a warranty does not preclude coverage unless it contributes to the loss. The insurer relied upon two circuit court decisions which had ruled that a duty of strict performance was a part of admiralty law. This Court also acknowledged that it had previously recognized such a duty. 348 U.S. at 315. Other circuits, however, had ruled that the duty of strict performance was not a maritime rule, but one of local origin or derived from "general commercial" law. *Id.* Despite the contrary circuit court decisions and its own prior dictum, this Court held that the rule of strict performance was not "judicially established as part of the body of federal admiralty law." *Id.* at 316. This Court then proceeded to the last inquiry—whether it should fashion such a rule—and chose not to do so.

This Court's decisions in *Just* and *Wilburn Boat* therefore teach us that what is "judicially established" or "so securely based" so as to constitute a maritime rule is not determined solely by inferior courts' decisions or by this Court's dictum. Where a particular rule has only a "slender basis in admiralty

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[6] The question was left unanswered because state law, which permitted recovery after the death of the tortfeasor, could permissibly supplement or modify federal maritime law if it did exist. *Id.* at 387.

cases in this country" or where the issue has not been "authoritatively determined" by the circuit courts or this Court, the rule is *not* authoritatively determined for purposes of determining whether local laws apply.

B. The Cases Relied on in the Decision Below Do Not Recognize or Constitute a General Maritime Dram Shop Rule

The Florida Third District Court of Appeal failed to follow the procedures established by this Court which required it to first determine whether an authoritative maritime rule of law existed creating a positive rule of liability for a shipowner in failing to protect its passenger from self-inflicted injuries as a consequence of voluntarily drinking too much. *See, e.g., Meyer v. Carnival Cruise Lines, Inc.*, No. C-93-2383, 1994 WL 832006 (N.D. Cal. Dec. 29, 1994).

Instead of performing the analysis required by this Court, the lower court applied the general "duty of reasonable care" standard based upon the incorrect conclusion that it was free to do so because of the conflicting decisions of a handful of trial courts. Reasonable care is only a standard used to define the scope of conduct necessary to comply with a duty imposed upon a shipowner by law. It does not create a legal duty where none had existed before. The existence of a legal duty in the first instance is a question of law. *See Weissman v. Boating Magazine*, 946 F.2d 811, 814 (11th Cir. 1991).[7]

Under the framework established by this Court, the lower court was required to first address the threshold issue of whether there is a maritime rule which creates liability for shipowners based on their sale of alcohol to passengers that is "so securely based" in federal maritime law as to be "authoritatively determined."

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[7] Just as the existence of a duty is an issue of maritime law, legal cause is an element of a maritime tort. *E.g., Florida Fuels, Inc. v. Citgo Petroleum Corp.*, 6 F.3d 330, 333 (5th Cir. 1993).

It is undisputed that there is no Congressional dram shop legislation. Therefore, under *Wilburn Boat* and *Just*, the lower court was required to explore whether there were either on-point holdings by this Court or a consensus of circuit court decisions on this issue. If there is only a "slender basis" for such a rule, then the rule cannot be considered "authoritatively determined," requiring application of Florida's Dram Shop Act. *E.g., Leclercq Marine Constr. Inc. v. Leco, Inc.*, 12 F.3d 1107, 1993 WL 495605 at **3 (9th Cir. 1993) (unpublished) (applying Washington and general common law where maritime law on liability for spread of fire was "sketchy").

Reference to the cases cited by the lower court[8] clearly demonstrate that there is no such rule. Four federal trial court decisions and one state appellate opinion comprise the entire foundation for the lower court's conclusion that an authoritative maritime rule exists. Such slender authority clearly fails to meet both the quantum and quality required by this Court in *Just* to create a judicially established maritime rule. This conclusion is reinforced by the Fourth Circuit's unpublished decision in *Fenninger v. Harris Crab House, Inc.*, 211 F.3d 1264, 2000 WL 289735 (4th Cir. 2000), which found that there is no duty arising from the service of alcohol to a patron under negligence or maritime law. In *Fenninger*, patrons of a bar were assaulted on their boat docked near the bar. They alleged that the bar failed to check the assailant's identification, he became inebriated, and then assaulted the

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[8] Although the Respondent urged the lower court to rely upon the Fifth Circuit's decision in *Reyes v. Vantage S.S. Co.*, 558 F.2d 238 (5th Cir. 1977), it correctly refused to do so. *Reyes* involved an action brought by the widow of a seaman who drowned swimming in the ocean while drunk. The Fifth Circuit premised its decision on the unique relationship between *seamen* and their vessels and the "paternalistic" duty the shipowner owes to seamen as a "wards" of admiralty. *Id.* at 241, 244. This unique, paternalistic relationship does not exist between a passenger and shipowner. Consequently, the basis of liability recognized in *Reyes* does not apply to a passenger.

plaintiffs. They argued that the bar had a duty to "control its intoxicated invitees" and thus prevent them from causing injury to persons on adjoining premises and that "but for" allowing the assailant to become intoxicated and leave the bar, the altercation would not have occurred. *Id.* at **3. The circuit court rejected this argument, holding that because the forum state, Maryland, had not adopted a dram shop law imposing liability on tavern owners for negligent acts of patrons, there was no such liability. The court unmistakably explained that there was no authority that "establishes a duty under maritime law that was conceivably breached in this case." *Id.*

Thus, there is no decision by this Court or any consensus of federal circuit courts which recognizes any "securely based" or "authoritatively determined" positive rule of maritime law imposing a duty on a shipowner to protect its passengers from self-inflicted injuries resulting from their voluntary intoxication. Although there are some district court decisions which support application of the reasonable care standard to the sale of alcoholic beverages, they do not constitute an "authoritative" maritime rule within the definitions set forth by this Court and all involve vastly different circumstances and accompanying public policies.

The majority of cases cited by the lower court to support the existence of a general maritime law rule of liability on the part of a shipowner for the sale of alcohol arise in the context of gambling vessels, which are often stationary dockside floating casinos common on rivers and lakes. Most involve claims that drunken guests injured third parties, typically in a drunk driving accident as the patron was leaving the casino after an evening of drinking and gambling. *E.g.*, *Bay Casino, LLC v. M/V Royal Empress*, 199 F.R.D. 464 (E.D.N.Y. 1999); *Quinn v. St. Charles Gaming Co.*, 815 So. 2d 963 (La. Ct. App. 2002); *see also Young v. Players Lake*

Charles, LLC, 47 F. Supp. 2d 832 (S.D. Tex. 1999) (not cited in decision below but relied upon by Respondent).[9]

These cases involve totally different and limited policy concerns, and are not indicative of the policies, needs or substance of the broader general maritime common law. In fact, it is debatable whether the individuals involved in many of these cases can even be considered "passengers," since transportation was not involved, or if it was, it was purely incidental. *See, e.g., Davis v. Players Lake Charles Riverboat, Inc.*, 74 F. Supp. 2d 675, 677 (W.D. La. 1999) (finding that federal maritime law did not apply to personal injury action arising from accident on riverboat casino); *King v. President Riverboat Casino-Mississippi, Inc.*, 894 F. Supp. 1008, 1013-14 (S.D. Miss. 1995) (same). The pivotal concern—and corresponding factual allegation—in these cases is that the drunk gambling boat patron was known to be creating an imminent danger to others by operating an automobile. In most such cases, patrons drive to the casino during the day and drive home later that same day, creating a strong foreseeable risk to the motoring public. *E.g., Bay Casino*, 199 F.R.D. at 465 (minor who was served alcohol during gambling day cruise was "deposited" on shore by crewmen "who knew or had reason to know that he would operate a motor vehicle after leaving the ship").[10]

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[9] The lower court also relied on *Guinn v. Commodore Cruise Line, Ltd.*, No. 94 Civ. 5890, 1997 WL 164290 (S.D.N.Y. Apr. 7, 1997). Curiously, in *Guinn*, the court found that there is no general maritime dram shop rule, that the forum state's dram shop law should be applied, and that a shipowner may owe a totally separate duty to assist a person who appears to be incapacitated and obviously needs help.

[10] The hazards of drunk driving have been given special consideration by both legislatures and the courts, which have imposed special duties on sellers of alcohol to mitigate the risks of the patron who gets behind the wheel while drunk. *E.g., Bertelmann v. Taas Assocs.*, 735 P.2d 930, 934 (Haw. 1987) (stating that Hawaii's dram shop law was "created to protect the general public from drunk driving accidents").

Unlike day-trip passengers, cruise passengers generally remain onboard ships which generally ply international waters for up to a week or longer and do not pose a foreseeable risk to the motoring public. Because of the nature of the activity, which involves transportation on international waters, the cruise ship passenger is also engaged in a much more typical type of maritime activity.

C. Reference to the Common Law Supports the Finding That There Is No General Maritime Rule Which Imposes Liability for Furnishing Alcoholic Beverages to a Person of Lawful Drinking Age

Because general maritime law is "[d]rawn from state and federal sources . . . and is an amalgam of traditional common-law rules, modifications of those rules, and newly created rules," reference to the common law is often necessary in determining the nature and parameters of general maritime law. *East River S.S. Corp. v. Transamerica Delaval, Inc.*, 476 U.S. 858, 864-65 (1986) (footnote omitted). The common law does not recognize a duty to protect an adult from voluntarily becoming intoxicated and then harming himself as a result of his own drunkenness.[11] *See, e.g., Mayo v. Hyatt Corp.*, 898 F.2d 47, 49 (5th Cir. 1990) (hotel had no duty to protect patron aside from maintaining premises in safe condition and refraining from affirmative acts that increase peril); *Players Lake*, 74 F. Supp. 2d at 677 (finding that under Louisiana law, riverboat casino had no duty to stop guest from drinking and was not liable to intoxicated guest who fell down stairs); *Bertelmann*, 735 P.2d at 933 ("Drunken persons

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[11] Many cases that acknowledge the non-existence of common law liability for serving alcohol do so on the alternative ground that there is no proximate causation as a matter of law. Instead, the voluntary excessive consumption of alcohol is considered the proximate cause. *Wright v. Moffitt*, 437 A.2d 554, 555 (Del. 1981) (citing cases).

who harm themselves are solely responsible for their voluntary intoxication.").

Therefore, other than legislatively enacted dram shop acts, there is historically no common law liability recognized for the mere furnishing of alcoholic beverages to a person of lawful drinking age, even when intoxicated and even when he injures a third party as a result of his intoxication. *Strang v. Cabrol*, 691 P.2d 1013 (Cal. 1984) (*en banc*); *Ellis v. N.G.N. of Tampa, Inc.*, 586 So. 2d 1042, 1044 (Fla. 1991); *Bertelmann*, 735 P.2d at 930. Some states do not even recognize a common law negligence cause of action for serving alcohol to minors. *See, e.g., Baker v. Casualty Indem. Exch.*, 561 So. 2d 1314, 1316 (Fla. Dist. Ct. App. 1990).

The common law is also similar to general maritime law in that neither imposes a general duty upon a business/shipowner to protect a patron/passenger from himself. *Cf. Salim v. United States*, 382 F.2d 240, 245 (5th Cir. 1967) (stating that "duty of [the post office] to use reasonable care to keep the premises reasonably safe for invitees remains and runs concurrently with the duty of the invitee to protect himself"); *Hutchinson v. Dickie*, 162 F.2d 103, 107 (6th Cir. 1947) (boat operator who had many alcoholic drinks with passenger who later fell overboard "had a right to assume that [passenger] would use ordinary care to protect himself and . . . was not required . . . to anticipate the necessity of having a life guard as a member of the crew."); *Sardella v. Hei Hotels No. 101* Inc., 715 N.Y.S.2d 748, 749 (N.Y. App. Div. 2000) (finding that hotel operator had no duty to protect guest from injuring himself in his intoxicated state).

Consistent with this common law rule, maritime courts have likewise held that a shipowner is not an insurer of its passengers' safety. *See, e.g., Everett v. Carnival Cruise Lines*, 912 F.2d 1355, 1358 n.3 (11th Cir. 1990); *Monteleone v. Bahamas Cruise Line, Inc.*, 838 F.2d 63, 65 (2d Cir. 1988). Maritime courts have also refused to adopt doctrines which would circumvent this rule. *See, e.g., Kermarec v. Com-*

pagnie Generale Transatlantique, 358 U.S. 625, 629 (1959) (refusing to apply unseaworthiness doctrine to passengers).

The nexus between common law and general maritime law in this area is further borne out by maritime laws which incorporate the common law duty imposed upon land-based business owners when dealing with the type of potential peril typically found on land. As pointed out by the Second Circuit in *Rainey v. Paquet Cruises, Inc.*, 709 F.2d 169 (2d Cir. 1983):

> There is no sound reason to require that a carrier exercise a high degree of care for those trifling dangers which a passenger meets "in the same way and to the same extent as he meets them daily in his home or in his office or on the street, and from which he easily and completely protects himself."

Id. at 171.

In the present case, Respondent claims to have fallen over a chest-high railing on a flight of stairs after becoming voluntarily intoxicated. There is no claim that the stairs were defective in any manner, simply that Petitioner failed to protect Respondent from the consequences of his own voluntary behavior. This accident is not the result of any peril of the sea and could have just as easily occurred at a theme park, a sports arena, or hotel. Since there would be no duty (or breach thereof) by any of these land-based businesses under the common law, there is no rational basis to impose such a duty under the general maritime law for precisely the same activity given the nexus between the two in this area and the lack of maritime character to the Respondent's accident.

Likewise, there is no difference in the public policy which refuses to impose liability under the exact circumstances upon Disney World,[12] Universal Studios, Busch Gardens, or the

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[12] The lack of logic in the lower court's ruling is evident when one considers The Walt Disney Company, which operates hotels, cruise ships

Orange Bowl and the existing policy inherent in maritime law. If anything, there is more public policy for imposing liability in the above land-based examples, since there is a much higher likelihood of the intoxicated guest injuring an innocent third-party when driving home, than there is of a cruise ship passenger on the high seas.

In the end, adopting a new positive rule of liability in the maritime arena, including the dram shop rule involved in this case, implicates many interests and policies. For example, the state of Hawaii has adopted a dram shop act creating a rule of liability against a purveyor, but Hawaii's courts emphasize that its purpose *is not* to reward drunken consumers for the consequences of their inebriation. *Bertelmann v. Taas Assocs.*, 735 P.2d 930, 934 (Haw. 1987). The Delaware Supreme Court expresses a similar sentiment that "human beings, drunk or sober, are responsible for their own torts." *Wright v. Moffitt*, 437 A.2d 554, 555 (Del. 1981). In California, the policy underlying its dram shop rule is that it is unfair to require a provider to share supervisory and legal responsibility with a consumer who voluntarily consumes alcohol. *Cory v. Shierloh*, 629 P.2d 8, 12, 13 (Cal. 1981). Where an established maritime rule is to be created, it should be either this Court or Congress which balances these interests and policies.

III. THE DECISION BELOW IS INCORRECT BECAUSE IT CREATES A POSITIVE MARITIME RULE OF SUBSTANTIVE LAW, RATHER THAN APPLYING STATE LAW

Because there is no Congressional act or authoritative rulings from the federal appellate courts, current maritime

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and theme parks. The rule adopted by the lower court would hold Disney liable for a passenger's alcohol consumption while aboard one of its ships, but not for the same passenger drinking at one of its theme parks or hotels, immediately before entering or after exiting its ship.

law requires Florida state courts to apply their own dram shop act. A line of lower court cases has correctly recognized this gap in maritime law and followed the procedures laid down by this Court to supplement maritime law with state dram shop acts. *See, e.g., Fenninger v. Harris Crab House, Inc.*, 211 F.3d 1264, 2000 WL 289735 (4th Cir. 2000) (unpublished); *Voillat v. Red & White Fleet*, No. C-03-3016, 2004 WL 547146 (N.D. Cal. Mar. 18, 2004); *Meyer v. Carnival Cruise Lines, Inc.*, No. C-93-2383, 1994 WL 832006 (N.D. Cal. Dec. 29, 1994);[13] *Horak v. Argosy Gaming Co.*, 648 N.W.2d 137 (Iowa 2002).[14]

If the lower court had applied Florida's dram shop act it would have reached a different result.[15] Florida's dram shop law provides:

> A person who sells or furnishes alcoholic beverages to a person of lawful drinking age shall not thereby become liable for injury or damage caused by or resulting from the intoxication of such person, except that a person who willfully and unlawfully sells or furnishes alcoholic beverages to a person who is not of lawful drinking age

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[13] *Meyer*, which addressed application of California's dram shop law in the case of a passenger injured in a fall on board a cruise ship, is conceptually indistinguishable from this case. Concluding that there was no federal maritime dram shop rule, the court correctly held that it was therefore required to apply California's dram shop law. *Id.* at *4.

[14] Even though *Horak* was partially grounded on the proposition that the state's dram shop law was *more* favorable than a negligence action, the court nevertheless recognized that there was no "consistent or uniform body of maritime common law imposing tort liability on sellers of alcohol" and that the action in that case rested exclusively upon statutory liability under the Iowa dram shop law. 648 N.W. 2d at 147, 142.

[15] The fact that Respondent's fall occurred outside Florida territorial waters does not change what law applies. If there is no authoritatively established maritime dram shop law, the court must apply Florida law when Florida bears the most significant relationship to the occurrence and the parties.

> or who knowingly serves a person habitually addicted to the use of any or all alcoholic beverages may become liable for injury of damage caused by or resulting from the intoxication of such minor or person.

§ 768.125, Fla. Stat.

In this case, it is undisputed that Respondent was 44 years old at the time of his accident and there is no allegation that he was habitually addicted to alcohol within the meaning of Florida's dram shop law. As such, the trial court correctly dismissed the complaint with prejudice.[16]

CONCLUSION

Maritime law requires courts to first determine whether an authoritative maritime rule exists. Where a rule has not been "securely based" or "authoritatively established" in federal maritime law the court must apply existing state law to fill the gap so long as it does not conflict with the characteristic features of maritime law or an act of Congress. The decision below failed to follow the procedures established by this Court when it addressed the existence *vel non* of a maritime rule imposing liability on a seller of alcohol. As a result, the Florida Third District Court of Appeal fashioned a positive rule of organic maritime law bypassing the proper consideration of such a new rule by Congress or this Court.

This Court should review the case in order to: (1) reaffirm the maritime principles which should be applied to determine when and whether a maritime rule of law exists as well as

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[16] The amended complaint also alleges a cause of action for breach of contract. That claim failed to state a cause of action as well since a contract of passage cannot create any higher duty than that found under maritime law. Since there is no duty owed by Petitioner under the common law, then there can be no corresponding contractual duty which was breached. *See Montelone v. Bahamas Cruise Lines, Inc.*, 838 F.2d 63 (2d Cir. 1988).

what rule to apply when an established maritime rule is lacking; and (2) resolve the current disagreement among the federal district and state courts regarding the existence of a maritime dram shop rule of liability. Both are serious questions of federal maritime law. For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A

DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT

No. 3D03-2132

LAWENCE W. HALL,

Appellant,

v.

ROYAL CARIBBEAN CRUISES, LTD.,

Appellee.

July 21, 2004

Rehearing and Rehearing En Banc Denied Dec. 13, 2004.

Before SCHWARTZ, C.J., and GERSTEN and WELLS, JJ.

SCHWARTZ, *Chief Judge*

This is an appeal from an order dismissing an amended complaint which alleged that the plaintiff, a paying passenger on the defendant's cruise ship, was injured on the high seas when, after having been served alcohol by the vessel's employees to and obviously past the point of intoxication, he staggered from a lounge, and while unable to look after himself fell down two flights of open stairways.

The order under review is erroneous and must be reversed because the complaint clearly stated a cause of action for breach of the defendant's duty to exercise reasonable care for the safety of its passengers, as is established by the general

maritime law[1] applicable here, *see Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625, 79 S.Ct. 406, 3 L.Ed.2d 550 (1959); *The Moses Taylor*, 4 Wall. 411, 71 U.S. 411, 18 L.Ed. 397 (1866); *Carlisle v. Ulysses Line Ltd.*, 475 So.2d 248 (Fla. 3d DCA 1985), in both (a) overserving the plaintiff, *Kludt v. Majestic Star Casino, LLC*, 200 F. Supp. 2d 973 (N.D.Ind.2001); *Bay Casino, LLC, v. M/V Royal Empress*, 199 F.R.D. 464 (E.D.N.Y.1999); *Quinn v. St. Charles Gaming Co.*, 815 So.2d 963 (La.App.2002), writ denied, 813 So.2d 412 (2002); *Guinn v. Commodore Cruise Line Ltd.*, 1997 WL 164290 (S.D.N.Y.1997), and (b) failing to protect him from his (albeit self-imposed) disability. *The City of Panama*, 101 U.S. 453, 25 L.Ed. 1061 (1879); *Chan v. Society Expeditions, Inc.*, 123 F.3d 1287 (9th Cir. 1997), cert. dismissed, 522 U.S. 1100, 118 S.Ct. 906, 139 L.Ed.2d 921 (1998); *Holmes v. Oregon & California Ry. Co.*, 5 F.523 (D.Or.1881).[2] This holding necessarily results also in a reversal of the separate (but substantively redundant) count which alleges a breach of the applicable contract of carriage between the passenger and the carrier. *Carlisle v. Carnival Corp.*, 864 So.2d 1 (Fla. 3d DCA 2003).

Reversed.

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[1] We disagree with the minority position that the issue may be governed by the dram shop act of the forum state. *Cf: Meyer v. Carnival Cruise Lines, Inc.*, 1994 WL 832006 (N.D.Cal.1994); *Voillat v. Red & White Fleet*, 2004 WL 547146 (N.D.Cal.2004). As is said in Robert D. Peltz, The Myth of Uniformity in Maritime Law, 21 Tul. Mar. L.J. 103 (1996): The first lesson that every law student studying Admiralty I learns is that, although most maritime suits may be filed in state court, they are nevertheless governed by substantive maritime law to maintain the uniformity which is necessary for a national maritime law.

[2] Under maritime law, of course, comparative negligence is a viable defense.

APPENDIX B

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
THIRD DISTRICT

Case No.: 3D03-2132
Lower Tribunal No. 02-170

LAWRENCE W. HALL,
Appellant(s)/Petitioner(s),

vs.

ROYAL CARIBBEAN CRUISES, LTD., ETC.,
Appellee(s)/Respondent(s).

July Term, A.D. 2004
December 13, 2004

Upon consideration, appellee's motion for rehearing and motion for certification of issue of great public importance are hereby denied. SCHWARTZ, C.J., and GERSTEN and WELLS, JJ., concur. Appellee's motion for rehearing en banc is hereby denied. COPE, J., recused.

[SEAL]

cc:
Michael D. Eriksen
Louise H. McMurray

(2)

Supreme Court, U.S.
FILED
MAY 6 - 2005
OFFICE OF THE CLERK

No. 04-1240

IN THE

Supreme Court of the United States

ROYAL CARIBBEAN CRUISES, LTD.,

Petitioner,

v.

LAWRENCE W. HALL,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

BRIEF IN OPPOSITION

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INTRODUCTION

This case involves a maritime injury claim by a Tennessee passenger against a Liberian cruise ship owner which arose entirely on the international high seas, aboard a vessel navigating between the Bahamas and Florida, wholly outside the territorial limits of Florida. Respondent alleged that he fell and sustained severe brain damage because Petitioner was negligent in the way it purveyed alcohol to passengers aboard its vessel and in the way it handled obviously inebriated passengers such as Respondent who posed a danger to themselves and others aboard Petitioner's vessel. The Florida Third District Court of Appeal, applying federal maritime common law, determined that Respondent's second amended complaint stated a cause of action.

Petitioner's preamble implies that the state intermediate appellate court went off on a lark, creating novel duties imposing new liability on ship owners who purvey alcohol to passengers and crew aboard vessels navigating on the international high seas.

All the Florida Third District Court of Appeal really did was adopt a majority view among federal maritime courts, that the standard of care applicable to ship owners who purvey alcohol, and passengers who consume it, aboard vessels on the international high seas, can be ascertained by applying existing principles of federal maritime common law. The state intermediate appellate court saw this approach as necessary to promote the principle of uniformity in maritime law. Consequently, the state appeals court rejected Petitioner's own suggested approach, which was to cherry-pick and apply the nearest state's dram shop statute, even if it directly

conflicts with otherwise applicable, existing rules of federal maritime common law.[1]

SUMMARY OF ARGUMENT

Providing alcohol to passengers or crew aboard a vessel in navigable waters has been judicially determined to be potentially dangerous and to have the capability to disrupt maritime commerce. Vessel owners engaging in such activities have therefore traditionally been required to exercise "reasonable care under the circumstances" pursuant to federal maritime common law. To our knowledge, no appellate court has ever displaced federal maritime common law with a local state's dram shop act to *immunize* a vessel owner who is negligent in the way it provides alcohol to passengers or crew aboard a vessel in navigation. That, however, is precisely what the state trial court did in the present case; and it was correctly reversed by the Florida Third District Court of Appeal for doing so.

The state appeals court correctly found that Count I of Respondent's second amended complaint sufficiently states a cause of action for negligence against Petitioner under principles of traditional maritime common law long applicable to vessel owners who are negligent in the providing of alcohol to passengers or crew aboard vessels in navigation. Under that same maritime common law, voluntary intoxication by a plaintiff only mitigates damages, and is not the complete defense the state trial court apparently believed it to be.

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1. Since the state appeals court found existing federal maritime common law to be sufficient, there was no need to perform a *Wilburn* analysis, as urged by the Petitioner.

REASON FOR DENYING THE PETITION

Florida's Third District Court of Appeal correctly evaluated Petitioner's responsibility, as a ship owner purveying alcohol to fare-paying passengers aboard a vessel in navigation on the high seas, by reference to existing uniform and sufficient rules of federal maritime common law, rather than by cherry-picking the nearest state's dram shop act, as urged by Petitioner.

According to Petitioner, in the absence of a specific federal maritime dram shop *statute*, a trial court is free to disregard traditional federal maritime common law rules governing the responsibilities of ship owners who purvey alcohol to passengers and/or crew, and instead cherry-pick and apply a dram shop statute of one state (Florida), which just happens to immunize sellers and providers of alcohol to adults in virtually all circumstances.[2]

Petitioner's suggested approach is supreme irony, given the words of Petitioner's trial counsel, written elsewhere, that:

> The preemption test under the admiralty clause should start with the proposition that there is a

2. § 768.125, F.S. (2000) is entitled "Liability for Injury or Damage Resulting from Intoxication." Under its provisions, only a seller or server who *knows* an adult customer is an alcoholic ("habitually addicted") can be liable. It is, for all practical purposes, an immunity statute for those sellers who are not either psychic or the customer's close family member or friend "in the know" about the customer's diagnosis of alcoholism. *Compare, e.g.*, Indiana Code § 7.2-5-10-15.5 (making sellers liable merely for serving alcohol to "visibly intoxicated" persons), cited in *Kludt v. Majestic Star Casino, LLC*, 200 F. Supp 973, 980 (N.D. Ind. 2001).

> presumption in favor of preemption as to all matters falling within admiralty jurisdiction. *Another disturbing trend that has been gaining momentum over the years has been to limit the application of preemption in maritime matters to acts of Congress, ignoring the extensive body of maritime common law. This trend not only ignores the constitutional underpinnings of the uniformity rule, but also is based upon a faulty constitutional analysis* . . . (our emphasis)
>
> In the early cases, the United States Supreme Court expressed no doubt that the constitution intended maritime common law to play an integral, if not central, part in the uniform system of admiralty law which the framers envisioned.

Robert D. Peltz, *"The Myth of Uniformity in Maritime Law,"* 21 Tul. Mar. L. J. 103, 130 (Winter, 1996), *citing The Lottawanna*, 88 U.S. 558, 574 (1874) ("It certainly could not have been intention to place the rules and limits of maritime law under the disposal and regulation of the several States, as that would have defeated . . . uniformity . . ."); *see also, generally*, I SCHOENBAUM, ADMIRALTY AND MARITIME LAW § 4-1, 4-3, 5-1, 5-2 (4th Ed. 2004) (the "general maritime law" is federal judge-made common law) (treatise available on Westlaw).

Petitioner's brief, on page 15, asserts, in bold, **"There is no general maritime rule which imposes liability for furnishing alcoholic beverages** . . ." To be more precise, it should read, "There is no traditional federal maritime common law rule creating immunity for purveyors of alcohol for consumption aboard vessels in navigation on the high seas."

Federal maritime common law has *always* required ship owners, no matter where they are, to exercise reasonable care for passengers where alcohol aboard vessels is concerned. *See, e.g., Holmes v. Oregon & California Ry. Co.*, 5 F. 523, 537 (D. Ore. 1881) ("defendant received [passenger] on its boat without objection and if he was palpably drunk was bound to take care of him"); *and cases cited at p.10, infra.* As a consequence, there has never been a need for Congress *per se* to enact a dram shop statute (which typically create *exceptions* to common law immunities, if any).

One statute that Congress did enact is 46 U.S.C.A. § 183c, which states:

> It shall be unlawful for the manager, agent, master, or owner of any vessel transporting passengers between ports of the United States or between any such port and a foreign port, to assert in any rule, regulation, contract, or agreement, any provision or limitation (1) purporting, in the event of loss of life or bodily injury arising from the negligence or fault of such owner or his servants, to relieve such owner, master, or agent from liability . . .
>
> All such provisions or limitations contained in any such rule, regulation, contract, or agreement are declared to be against public policy and shall be null and void and of no effect.

46 U.S.C.A. § 183c includes no alcohol-related exceptions to the stated strong federal maritime public policy favoring full shipowner liability to passengers for its negligence, if any. Petitioner thus seeks, in the present case, a result which Petitioner itself could not legally impose by contract with a passenger, namely, to immunize Petitioner for its negligence, if any, in

providing alcohol to passengers for consumption aboard its vessels on the high seas, or in negligently failing to assist obviously inebriated fare-paying passengers who may pose a danger to themselves or others.

Maritime common law on this issue is driven by the need to minimize alcohol-related incidents on the high seas, which can disrupt international maritime commerce.[3] *See*, *e.g.*, *In re: Exxon Valdez*, 296 F. Supp. 2d 1071 (D. Alaska 2004) (drunken captain grounded tanker, spilling oil); *also cf. Beckham v. Rick's Watercraft Rentals*, 719 So.2d 1025 (Fla. 3rd DCA 1998) (discussing disruptive effect of maritime injuries on commerce). States which are primarily interested in limiting the liability of local purveyors of alcohol have few, if any, such concerns. Petitioner does not explain how removing the consequences of carelessness will encourage ship owners to be careful how they facilitate, if not encourage, the consumption of alcohol by passengers or crew aboard their vessels on the high seas.

The applicable federal maritime common law rule was restated (again) by this court in *Kermarec v. Compagnie Generale Transatlantique*, 358 U.S. 625, 79 S. Ct. 406 (1959) as follows:

> The district court was in error in ruling that the governing law in this case was that of the state of

3. *Reyes v. Vantage Steamship Co., Inc.*, 558 F. 2d 238 (5th Cir. 1977) provides a good example of how negligence in the way alcohol is provided to persons aboard a ship in navigation can actually disrupt maritime commerce. The ship had to stop to attempt to rescue a drunken crew member who fell overboard and drowned. By contrast, alcohol-related mishaps ashore typically do not disrupt international commerce. There may be a call for an ambulance, or for the police; but there is no need to stop ships in the middle of the ocean, to call other vessels to assist in rescues, or to turn ships around for purposes of delivering injured persons to the nearest port for medical treatment.

> New York. Kermarec was injured aboard a ship upon navigable waters. It was there that the conduct of which he complained occurred. The legal rights and liabilities arising from that conduct were therefore within the full reach of the admiralty jurisdiction and measurable by the standards of maritime law [citations omitted] . . .
>
> If this action had been brought in a state court, reference to admiralty law would have been necessary to determine the rights and liabilities of the parties . . .
>
> *It is a settled principle of maritime law that a ship owner owes the duty of exercising reasonable care toward those lawfully aboard the vessel who are not members of the crew* . . . (our emphasis)
>
> In instructing the jury that contributory negligence on Kermarec's part would operate as a complete bar to recovery, the district court was clearly in error. The jury should have been told instead that Kermarec's contributory negligence was to be considered only in mitigation of damages.

79 S. Ct. at 408-09. In *Kermarec*, this court did not, as urged here by Petitioner, limit a ship owner's "duty of exercising reasonable care" only to sober people aboard the vessel. *See Olsen v. New York Central Railroad*, 341 F. 2d 233, 234 (2d Cir. 1965) (under *Kermarec*, ship owner had "reasonable care" responsibility to protect intoxicated visitor).

Petitioner suggests that there is conflict among federal circuits concerning the applicable maritime common law rule, and, if so, state law may be applied.[4] *Brief of Petitioner* at 13, 18-19; however, concerning the present issues, there is no conflict at all. This court has spoken, in *Kermarec*, *supra*. A ship owner has a general responsibility to exercise reasonable care in all of its activities and undertakings, and there is no exception where alcohol is involved; and where such a "substantive maritime principle [is] placed at risk by the potential application of state law, *there is no leeway for variation or supplementation by state law.*" *In re: Amtrak, "Sunset Limited,"* 121 F.3d 1421, 1426 (11th Cir. 1997) (emphasis added).

Petitioner points out that we cited below to *Reyes v. Vantage Steamship Co., Inc.*, 558 F. 2d 238 (5th Cir. 1977), which Petitioner tries to distinguish as an unseaworthiness case, not applicable to passengers. *Brief of Petitioner*, at 12 n.8. Petitioner's argument, however, overlooks that *Reyes* was also a negligence case. 558 F.2d at 238. As to the ship owner's *negligence*, the court stated:

> Since Reyes drank too much in the confined areas of a ship whose master (and owner) had supplied the intoxicants to the likely detriment of the

4. To create a "conflict among circuits" on this issue, Petitioner relies upon *Fenniger v. Harris Crab House, Inc.*, 2000 W.L. 289735 (4th Cir. 2000), an unpublished case. *See Brief of Petitioner* at pp. 12-13, 19. *Fenniger*, however, was a shoreside premises liability case, decided under the law of Maryland, where the plaintiffs were patrons of defendant's inn, located on a dock. The plaintiffs were not passengers and the defendant was not a maritime common carrier. *Compare Olsen v. New York Central Railroad*, 341 F.2d 233, 234 (2d Cir. 1965) (ship owner owed maritime duty of reasonable care to protect intoxicated visitor).

> seaman and the whole crew without any supervisory control of its use, *the vessel must bear at least part of the fault* . . .
>
> The practice of selling alcohol in such great quantities to the crew should not have been overlooked, or impliedly neglected by the district court in its findings. Surely had this man not been drunk he would never have gone swimming in the ocean initially. It is the opinion of this court that the practice revealed by this record of operating a floating dram shop makes a ship unseaworthy, *and if not that, at least clearly negligent.* (emphasis added)

558 F. 2d at 244; *See also, e.g., Thier v. Lykes Bros., Inc.*, 900 F. Supp. 864, 878-79 (S. D. Tex. 1995) (seaman status of plaintiff irrelevant to ship-owner liability under federal maritime common law for negligence in "failing to monitor alcohol consumption aboard, fostering a party atmosphere, etc.")

Petitioner relies heavily on two unreported decisions from federal District Judge Patel of the Northern District of California forming the "minority view" explicitly rejected by Florida's Third District Court of Appeal. *See Meyer v. Carnival Cruise Lines, Inc.*, 1994 W.L. 832006 (N.D. Cal. 1994) (Patel, J.) and *Voillet v. Red and White Fleet*, 2004 W.L. 547146 (N.D. Cal. 2004) (Patel, J.). In the first case (*Meyer*), Judge Patel noted that, "Meyer does not dispute that no federal maritime dram shop rule exists." With all due respect to Mr. Meyer, he *should* have disputed that point (as we have done in this case) because there most certainly *is* an applicable and completely sufficient federal maritime common law rule ("reasonable care under the circumstances").

District Judge Patel's leap to the nearest state's dram shop rule was, with respect, simply wrong; and it only serves to disrupt, rather than to promote, uniformity in such cases. Judge Patel's analysis in *Meyer*, rejected by Florida's Third District Court of Appeal, has not been adopted by any other maritime court, state or federal. *See*, *e.g.*, *Young v. Players Lake Charles, LLC*, 47 F. Supp. 2d 832 (S.D. Tex. 1999) (*Meyer* not persuasive); *Kludt v. Majestic Star Casino, LLC*, 200 F. Supp. 2d 973, 978 (N.D. Ind. 2001) (same). Using Judge Patel's reasoning, a court in a maritime case could just as easily cherry-pick the dram shop statute of, say, Iowa, which imposes upon alcohol-purveying defendants a *higher* standard than "reasonable care under the circumstances." *See Horak v. Argosy Gaming Co.*, 648 N. W. 2d 137, 146 (Iowa 2002) (Iowa dram shop statute more favorable to plaintiffs than federal maritime common law).

Petitioner, far from seeking uniformity, actually advocated below that purveyors of alcohol aboard vessels should have *five different* standards of care: one for seamen who drink and get injured; another for passengers who drink and get injured; another for third parties who may be injured off the ship as a consequence of alcohol sales aboard the ship; another for riverboats, and yet another for vessels on the high seas. Under Petitioner's analysis, maritime commerce would presumably be less disrupted by a ship owner's negligence if a drunk who fell overboard was a passenger instead of a seaman as in *Reyes*, *supra.*

Florida's Dram Shop Act, unlike Petitioner, makes no distinction among seamen, passengers, or third parties injured elsewhere. Florida's Dram Shop Act would immunize ship owners as to all; and if any court lets that genie out of the bottle (no pun intended), the very next case we shall see will

involve a ship owner asserting a local dram shop act like Florida's as a complete defense to a seaman's claim, or to a claim by a motorist injured off a ship as a consequence of alcohol sales aboard a ship (which would otherwise be governed by maritime law pursuant to the Admiralty Extension Act, 46 U.S.C.A. § 740).

Petitioner implies that, in the eyes of maritime law, fare-paying passengers of maritime common carriers are second-class citizens, deserving of a lower level of ship-owner responsibility and care than seamen. *Brief of Petitioner* at 12 n.8. Nothing, however, could be further from the truth. *Northern Commercial Co. v. Nestor*, 138 F. 383 (9th Cir. 1905) ("a passenger . . . is entitled to no less care from the ship than a seaman").

Over 120 years ago, in *Holmes v. Oregon & California Ry. Co.*, 5 F. 523, 537 (D. Ore. 1881), where the decedent was an intoxicated ferry passenger who fell over the side, the court said:

> *The defendant was a common carrier of passengers* for hire, and for their protection was subject to a very strick (sic) responsibility. *Therefore, it was bound to provide for the safety of the deceased,* while upon its boat and getting on shore, "so far as was practical by the exercise of human care and foresight . . ." [citation omitted] . . . *The defendant received him on its boat without objection, and if he was palpably drunk it was bound to take care of him accordingly.* (our emphasis)

5 F. at 538-39; *citing Robinson v. Pioche*, 5 Cal. 460 (1855) (Hydenfelt, J.) ("A drunken man is as much entitled to a safe street as a sober one, and much more in need of it.")

Concerning its fare-paying passengers, Petitioner essentially asked the Florida Third District Court of Appeal to downgrade its responsibilities as a maritime common carrier to the liability, if any, of a shoreside establishment like a 7-11 or a corner bar. Such shoreside establishments, however, do not enter into contracts of carriage for hire, with the extensive extra legal responsibilities associated with them.

Petitioner's entire presentation implicitly deems passengers like Respondent as miscreants who simply deserve to be injured. If that is true, a jury can "spank" such passengers with the paddle of comparative negligence. *See, e.g., Reyes v. Vantage Steamship Co.*, 672 F. 2d 556, 557 (5th Cir. 1982) (ship owner 15% at fault and seaman 85% at fault where unchecked alcohol sales contributed to a seaman's death). However, judicially eliminating Respondent's entire cause of action, as desired by Petitioner, would directly and impermissibly conflict with traditional federal maritime common law of negligence, as follows:

> One of the essential and longstanding features of substantive admiralty law is that contributory negligence can be considered only in mitigation of damages . . . *contrary rules under which contributory negligence wholly bars an injured person from recovery are "completely incompatible" with modern admiralty practice.* [citation omitted] . . . This case involves a maritime tort; the court should have applied the maritime rule under which the plaintiff's comparative negligence only mitigates her damages. (our emphasis)

Carey v. Bahamas Cruise Lines, 864 F. 2d 201, 207 (1st Cir. 1988) (rejecting application of Massachusetts contributory negligence rule to cruise ship injury).

Since there are applicable and sufficient federal maritime common law rules ("reasonable care under the circumstances" for ship owners, and comparative negligence in mitigation of damages for plaintiffs) there was no need for Florida's Third District Court of Appeal to carry out a *Wilburn* analysis[5] in this case, unless Florida's Dram Shop Act provided a more favorable remedy to the plaintiff than maritime law, which it does not. *Kludt v. Majestic Star Casino, LLC*, 200 F. Supp. 2d 973, 978 (N. D. Ind. 2001) (no need to fashion federal maritime dram ship rule, federal maritime common law suffices); *Bay Casino, LLC v. M/V Royal Empress*, 199 F.R.D. 464, 466 (E. D. N.Y. 1999) (same); *Young v. Players Lake Charles, LLC*, 47 F. Supp. 2d 832, 834-36 (S. D. Tex. 1999) (same); *cf. Flying Boat, Inc. v. Alberto*, 723 So. 2d 866, 868 (Fla. 4th DCA 1998) (state law remedies for maritime death have been allowed only where more generous than federal law.)

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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---

5. *See Brief of Petitioner* at 9-10,12.

(3)

MAY 2 6 2005

No. 04-1240

IN THE

Supreme Court of the United States

ROYAL CARIBBEAN CRUISES LTD.,
Petitioner,

v.

LAWRENCE W. HALL,
Respondent.

On Petition for a Writ of Certiorari to the Florida District Court of Appeal, Third District

REPLY BRIEF

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RULE 29.6 CORPORATE DISCLOSURE STATEMENT

Petitioner's Corporate Disclosure Statement was set forth at page ii of its Petition for a Writ of Certiorari, and there are no amendments to that Statement.

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REPLY BRIEF

RATHER THAN DIRECTLY RESPONDING TO THE LEGAL PRINCIPLES ARGUED BY PETITIONER FOR THIS COURT'S REVIEW OF THE DECISION BELOW, RESPONDENT TRIES TO DODGE THEM BY MISCHARACTERIZING THE ARGUMENTS ASSERTED IN THE PETITION

Respondent mischaracterizes two key arguments set forth in the petition, thereby trying to divert this Court's attention away from the actual issues raised in urging this Court to accept review of the lower court's decision. First, Petitioner has never argued that "in the absence of a specific federal maritime dram shop *statute*, a trial court is free to disregard traditional federal maritime common law rules . . ." Br. in Opp'n at 3. To the contrary, Petitioner focuses on what constitutes a general maritime rule in the first instance and

maintains throughout its petition that "[i]n the absence of a Congressional act, a decision of this Court, or a concurrence of circuit court decisions, established maritime rules of substantive law do not exist." Pet. at 1, 9-17.

Respondent attempts to take his mischaracterization one step further by quoting an article authored by Petitioner's trial counsel which he believes contradicts what *he misrepresents to be* Petitioner's position. Br. in Opp'n at 3-4. Petitioner's position, however, is in no way inconsistent with the article's statement that courts have been "ignoring the extensive body of maritime common law." Br. in Opp'n at 4. Petitioner asserts that in the absence of an established maritime rule of law—*whether derived from Congressional act, a decision from this Court, or a consensus of circuit court decisions*—state courts must invoke their own laws to supplement the gaps in maritime law. Pet. at 5-6. In fact, the crux of the petition is that state courts have undermined maritime law's goal of uniformity by establishing their own rules of maritime law and procedure—like the appellate court below—when there are already established and applicable maritime rules and procedures. Pet. at 7-8. Pet. at 7-8.

Furthermore, Respondent repeatedly asserts that Petitioner has inappropriately "cherry-picked" Florida's dram shop statute because of its favorable language.[1] Br. in Opp'n at 1, 3, 10. The facts of this case belie such an implication: Respondent filed suit in Florida; Petitioner's base of operation is in Florida; and the ship on which Respondent was injured departed from and returned to port in Florida. In short, Florida is the only state with a significant relationship to the events surrounding Respondent's accident.

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[1] The superficiality of Respondent's entire position is borne out by his assertion that he would have had the lower court apply Florida's Dram Shop Act had it provided a more favorable remedy to him. Br. in Opp'n at 13.

Second, Respondent has taken his own voluntary intoxication and blurred the concept of "duty"—the *sine qua non* of any liability—with an affirmative defense which presumes the existence of liability. Contrary to Respondent's implication, Petitioner has not maintained that Respondent's voluntary intoxication would be a "complete defense," Br. in Opp'n at 2, or that it would be an issue of comparative negligence, *id.* at 12, thereby immunizing it from liability. Rather, Petitioner has consistently maintained that the case boils down to whether, under the circumstances of this case, a shipowner owes a duty to the passenger in the first instance, which it does not. *See* Pet. at 11-18. The issue of comparative negligence is irrelevant since Respondent's claim is not viable.

Respondent perpetuates his misconception by claiming that under Petitioner's view passengers would be deemed "second-class citizens" or "miscreants,"and relegated to an inferior standard of care than seamen. Br. in Opp'n at 11, 12. However, federal maritime law has always afforded seamen a special status because of the unique relationship between seamen and their vessels and the "paternalistic" duty the shipowner owes to seamen as "wards" of admiralty. *See Reyes v. Vantage S.S. Co.*, 558 F.2d 238, 241, 244 (5th Cir. 1977). For example, the doctrines of unseaworthiness and maintenance and cure are available to seamen but not to passengers and a seaman's negligence claim under the Jones Act is subject to reduced standards of causation. In essence, seamen are entitled to protections exceeding those of a ship's passengers—the obligation to the citizenry is not reduced, rather the obligation to seamen is heightened.[2]

---

[2] Petitioner is not urging this Court to adopt five different standards of care as argued by Respondent. Br. in Opp'n at 10. Rather, Petitioner contends that seamen are subject to their own special rules and everyone else is subject to the applicable general maritime rule, if one exists. If there is no applicable general maritime rule, then a court should look to apply state law.

Respondent cites to *Holmes v. Oregon & California Railway Co.*, 5 F. 523 (D. Or. 1881), for the proposition that "[f]ederal maritime common law has *always* required ship owners, no matter where they are, to exercise reasonable care for passengers where alcohol aboard vessels is concerned." Br. in Opp'n at 5. However, *Holmes* does not support that proposition for at least three reasons. First, the theory of liability against the shipowner was based on a defect in the premises and not on the decedent's voluntary intoxication. *Id.* at 542. Second, the court found that the passenger's intoxication played no part in his accident which occurred when he alighted from the ferry. *Id.* at 539, 542 ("before he reached the ferry-boat the effect of the liquor had practically passed away"; the defendant's failure to have some guard or gate to prevent passengers from prematurely alighting and inadequate lighting "was the negligence which caused the death"). Third, the entire case is dicta since the court ultimately dismissed the decedent's administrator's case. *Id.* at 535, 544.

Respondent also cites to *Olsen v. New York Central R.R. Co.*, 341 F.2d 233 (2d Cir. 1965), for a similar proposition but *Olsen* is also inapplicable for at least three reasons. Br. in Opp'n at 7. First, *Olsen* did not involve injuries sustained by a passenger on a cruise ship who had been served alcohol; it involved a commercial fisherman who boarded a tug boat to observe the duties of the deck hands and drowned after he fell overboard. *Olsen*, 341 F.2d at 234. Second, although the decedent was intoxicated at the time of the accident, there was no evidence that anyone on the tug boat had served the decedent alcohol. Most importantly, the shipowner's liability was premised on its failure to have a guardrail at the spot where the decedent fell overboard. *Id.* at 235.

CONCLUSION

Rather than responding to the petition, Respondent has erected two straw men, claiming them to be Petitioner's arguments, only to knock them down. Respondent has not, however, confronted the actual reasons underlying Petitioner's assertion that this Court should review the case in order to reaffirm the maritime principles which should be applied to determine when and whether a maritime rule of law exists as well as what rule to apply when an established maritime rule is lacking. This Court should also accept review to resolve the current disagreement among the federal district and state courts regarding the existence of a maritime dram shop rule of liability.

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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